



Health Services
LOS ANGELES COUNTY

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December 29, 2011

TO: Each Supervisor

FROM: Mitchell H. Katz, M.D.
Director

Tobi L. Moree
Chief Compliance Officer

SUBJECT: **DEPARTMENT OF HEALTH SERVICES
COMPLIANCE PROGRAM: STATUS REPORT**

Mitchell H. Katz, M.D.
Director

Hal F. Yee, Jr., M.D., Ph.D.
Chief Medical Officer

John F. Schunhoff, Ph.D.
Chief Deputy Director

This is to provide your Board with a status report on the Department of Health Services (DHS) Compliance Program. The overall goal of the DHS Compliance Program is to ensure that DHS and its workforce members comply with applicable laws, regulations, policies and other standards of conduct. The primary focus of the Compliance Program is on adherence to government and private health plan requirements and on laws that govern health care business practices, such as the False Claims Act, fraud and abuse laws, and privacy laws.

Following is a summary of the significant Compliance Program activities and other compliance-related events since our last status report of December 14, 2010.

New Chief Compliance Officer

In August 2011, Tobi L. Moree was appointed as the Chief, Audit and Compliance Division, and as such, now serves as the DHS Chief Compliance Officer. Ms. Moree brings more than 30 years of County experience in Human Resources and Administration. Prior to her current position, Ms. Moree was the Chief, Regulatory Compliance Division, where she had oversight for compliance with State and federal regulatory and accrediting requirements related to Human Resources.

Recovery Audit Program

In 2009, the Centers for Medicare and Medicaid Services (CMS) implemented its national Recovery Audit Program (previously known as RAC). The purpose of the Recovery Audit Program is to identify improper Medicare payments. CMS contracts with private Recovery Auditors to conduct post-payment reviews through automated analysis of claims and/or by reviewing medical record documentation. Health Data Insights, Inc. (HDI) is the Recovery Auditor in California.

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To ensure access to high-quality, patient-centered, cost-effective health care to Los Angeles County residents through direct services at DHS facilities and through collaboration with community and university partners.



HDI began these post-payment audits at DHS hospitals in January 2010. As of October 2011, HDI has identified \$1.4 million in overpayments (net of underpayments) at DHS hospitals for inpatient and outpatient services. HDI found improper payments on approximately 35% of the medical records/claims it reviewed at DHS. It is important to note that HDI selects for review those DRGs/diagnoses that have a high propensity for error; therefore, this cannot be considered an average error rate at the DHS facilities. Approximately 66% of the improper payments found were related to medical necessity and 33% were due to coding errors.

The DHS hospitals' Recovery Audit teams are continuing to manage the Recovery Audits and take corrective actions, as needed, to ensure compliance with Medicare regulations and avoid future improper claims. Additionally, the Compliance Program continues to provide oversight of the Recovery Audit activity and coordinates periodic DHS-wide meetings and education to discuss common issues and identify solutions/corrective actions.

The Patient Protection and Affordable Care Act included funding for the expansion of the recovery audits to Medicaid, as well as other fraud and abuse enforcement activities. States are required to contract with recovery auditors for the purpose of auditing Medicaid claims and identifying improper payments. California issued an RFP in October 2011 and indicated that its program will go into effect March 2012 or later. There have been few details provided by the State as to how it will implement this program. DHS is working with outside counsel to monitor the development and implementation of the State's program and to determine the potential impact on the County.

Compliance Investigations and Audits

The Compliance Program developed its FY 2010-2011 Compliance Audit Plan based on an evaluation of potential risk areas, input from the DHS Compliance Committee, available resources, and other relevant factors. During FY 2010-2011, the Audit and Compliance Division (A&CD) completed 20 compliance-related investigations and audits related to patient privacy, falsification of documents, conflicts of interest, billing compliance and contract compliance, among other areas. Seven of these reviews identified non-compliance with policies, procedures, regulations or other standards and resulted in recommendations for corrective actions, including discipline, additional training, improved policies and procedures, revised billings and strengthened internal controls.

The FY 2011-12 Compliance Audit Plan focuses primarily on the Medicare admissions reviews discussed below. It also allocates resources to investigate issues raised by hotline calls or referrals from management. The Compliance Program continues to encourage workforce members to report potential problems so that issues can be identified, investigated and corrected, as appropriate.

Medicare Admissions Review

Earlier this year, the A&CD initiated a review of the medical necessity of Medicare admissions at LAC+USC Medical Center, under the direction of County Counsel. A probe sample of Medicare inpatient admissions was conducted, and a review of a statistically valid sample focused on the medical necessity of two and three day stays by Medicare patients has been initiated. To the extent appropriate, repayments will be made to Medicare for improperly submitted claims. LAC+USC has instituted additional internal controls to prevent any improper billings and repaid the already identified improper claims to Medicare.

All DHS hospitals have been reminded of the process/controls that should be followed to confirm the medical necessity of Medicare admissions prior to billing. The broader implementation of Interqual as the basis for medical necessity determinations, and where feasible, the use of observation beds in DHS hospitals, will assist DHS in ensuring the medical necessity of inpatient admissions. A&CD will conduct a review at the remaining three DHS hospitals to validate that appropriate controls for Medicare admissions are in place.

Patient Privacy

The State and federal laws both require the reporting of certain alleged privacy violations. For the period of December 2010 through November 2011, DHS hospitals reported 17 suspected privacy violations to the State Licensing and Certification Division. The State completed an investigation of eight of the reported violations and nine are pending. Four of the investigations resulted in citations to the hospital. To date, none of the violations cited by the State have resulted in a fine. However, during this reporting period, DHS hospitals were fined approximately \$10,000, in total, for failure to report several suspected violations within the five day reporting requirement. The affected facilities have implemented corrective actions to ensure timely reporting of suspected breaches. One of the privacy violations which affected over 500 individuals also met the federal reporting requirements, and was appropriately disclosed under federal law.

DHS management continues to provide patient privacy compliance education on various topics such as preventing privacy or security violations, reporting requirements, safeguarding electronic protected health information. In addition, DHS revised its privacy breach reporting policy, which reminds staff of their responsibility to report any suspected privacy breaches timely.

The federal Department of Health and Human Services (DHHS) continues to enhance its enforcement activities of the Health Insurance Portability and Accountability Act (HIPAA) privacy and security rules and breach notification standards. To implement this mandate, the Office for Civil Rights (OCR) has initiated a pilot program to conduct approximately 150 audits of covered entities over the next 12 months to assess privacy and security compliance. DHHS views this as an opportunity to examine mechanisms

for compliance, identify best practices and discover risks and vulnerabilities that may not have come to light through OCRs ongoing complaint investigations and compliance reviews. Also, DHHS has significantly increased the penalties for non-compliance with federal regulation.

In response to the federal audit program, the DHS facilities have been instructed to ensure that their internal privacy and security audits are documented and appropriate corrective actions are taken. In addition, the County HIPAA Privacy Officer conducts compliance reviews of the DHS facilities to ensure compliance with federal requirements. DHS is continuing to work with the County's HIPAA Privacy Officer and Information Security Officer to implement policies and infrastructure to comply with HIPAA requirements.

Compliance Update Training

Within the next few months, DHS plans to initiate its next compliance update training which will focus on the privacy and confidentiality of patient health information. The key concepts of the training include safeguarding patient information in all forms, accessing patient information only if there is a business need, and reporting suspected privacy breaches immediately upon discovery.

Ongoing Compliance Activities

In addition to the above, following are some of the ongoing compliance activities:

The DHS Compliance Committee meets approximately every other month to discuss and determine actions needed related to potential risk areas, new compliance initiatives/regulations, compliance training, compliance goals and priorities, policy changes, the status of compliance audits and investigations, and other compliance issues.

The Audit and Compliance Division continues to manage the DHS Compliance Hotline which provides a mechanism for employees and the public to report concerns and suspected violations, and to make inquiries related to ethical and compliance issues. During FY 2010-2011, A&CD received 77 calls through the Compliance Hotline and initiated actions to respond to these concerns, as appropriate.

Conclusion

The Compliance Program focuses its efforts on its primary objective of preventing, detecting, and correcting inappropriate conduct. However, budget constraints continue to limit the scope and level of DHS' compliance activities, particularly at the facility level. The federal and State's increased enforcement efforts and compliance requirements have resulted in additional workload and have increased the need for additional compliance resources at the facility level. This need will be assessed during 2012.

We will continue to provide periodic status reports to your Board to keep you informed of the compliance activities. Significant compliance issues will be brought to your immediate attention, as appropriate.

If you have any questions or need additional information, please let us know.

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c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors